IN THE

Supreme Court of the United States

OCTOBER TERM, 1970.

No. 1033

BRASWELL MOTOR FREIGHT LINES, INC.,
Petitioner,

vs.

TEAMSTERS LOCAL UNIONS 745, 47, 886, 523, 270, 5, 568, 667 AND 891,
Respondents.

REPLY BRIEF OF PETITIONER.

I.

Respondents' Brief in Opposition misrepresents the substance of this case.

Respondents' first "Question Presented" is an obvious distortion. We do not contend that "enforcement of an [any] award" of an arbitral body "denies due process". We contend that enforcement of *this award* is a denial of procedural due process: that is, that this Court should decide whether the federal courts should enforce a decision of an arbitral committee made with flagrant and obvious disregard of basic rules of procedural regularity.

We agree that judicial generosity is warranted in enforcing the authorized awards of grievance committees under collective bargaining agreements (typically involv-

ing particularized disputes such as the conditions under which men work for hire). But such liberality assumes regularity, essential procedural adequacy, in the proceedings of the committees. If the assumption is unjustified, the courts will be lending their aid to the invocation of arbitrary power, arbitrarily exercised. This is particularly dangerous and reprehensible where, as here, the possibility of collaboration between a union and dominant companies in an industry, arbitrarily to impose their joint will on a dissident member of the industry, is apparent.[1]

We ask this Court, in this case of first impression, to grant certiorari and consider an issue that is fundamental to the integrity and viability of the arbitration process. In substance, we ask this Court to consider whether a grievance committee has an obligation of faithfulness not only to the collective bargaining agreement,[2] but to fundamental principles of procedural regularity.

Respondents' attempts to defend the quality of the proceedings of the Grievance Committee are obviously ineffective. They were ruthless, harsh and peremptory and were quickly terminated by Mr. Hoffa's *dictat* (Ex. A to Pet., p. v).

(1) Respondents urge (R. Br., p. 4) that this Court assume that there were proceedings before the Grievance Committee not revealed in the transcript. There is no justification for this proposal. Respondents seem to ask this Court to think that the hearing on Petitioner's case continued in "off the record" proceedings which supplied

1. The situation here presented is in sharp contrast with the familiar practice of appointing impartial arbitrators under collective bargaining agreements, usually professionals, who meticulously hear evidence, make findings and render written opinions.

2. This was the holding of *United Steelworkers* v. *Enterprise Wheel and Car Corp.*, 363 U. S. 593, 597 (1960); "When the arbitrator's words manifest an infidelity to this obligation, courts have no choice but to refuse enforcement of the award."

the fatal deficiencies disclosed by the transcript. We do not know what, if anything, happened other than as shown by the transcript. Perhaps the conferees discussed other matters of industry interest; but they may have discussed the football season or the state of the Nation!

(2) Respondents boldly assert (Resp. Br., p. 6) that "detailed and undisputed facts were before the Grievance Committee." They refer to the so-called "Request for Interpretation" filed by the unions, instituting these proceedings. This brief, unsworn paper is merely a pleading asking that Petitioner's BFL operations be held subject to the National Master Freight Agreement as "subsequently acquired operations", relying on the indisputably erroneous grounds that Petitioner "commenced operations" of these facilities on July 1, 1964 (Resp. Br., pp. 13-16). (Actually, Petitioner had operated the facilities as a subsidiary since their acquisition on July 1, 1957. On July 1, 1964, Petitioner merely changed the form of ownership by merger).

Mr. Hoffa and the Grievance Committee were told that there was a factual dispute and material to be considered. The Acting Chairman of the Committee, an employer representative, called their attention to this fact (Ex. A to Pet., p. v):

> "Mr. Bauer: Gentlemen, at this point, based on the mailing of the Braswell Freight Lines, a two-page presentation, and on some of the correspondence addressed to the Committee by Murray Miller, we are not in agreement at this time that this is an interpretation; that it could possibly be a factual case."

Mr. Hoffa, however, peremptorily dismissed the suggestion. The following colloquy ensued:

> "Mr. Hoffa: I do not understand your words.
> Mr. Bauer: It could possibly be a factual case, rather than an interpretation.

Mr. Hoffa: Under what theory? What section are you referring to and what articles do you depend upon for the fact that this is a factual case, not an interpretation?

Mr. Bauer: My statement is not prefaced on a section nor on an article, but on the background of the case and the correspondence thereto."

Clearly, elementary regard for the essentials of due process, even if we indulge in the greatest permissible license of informality before Grievance Committees, would have required, at least, that the "correspondence" referred to should have been produced and that the factual dispute be delineated and the issues considered.[3] Even this rudimentary deference to the requirement that arbitral bodies consider the merits of the case before them was summarily rejected.

It is Petitioner's position that if the Committee rejected Petitioner's jurisdictional objections, stated in its "Special Appearance", it was then obliged to advise Petitioner and provide it with an opportunity to appear on the merits.

Our position is not contrary to this Court's statement that "Arbitrators have no obligation to the court to give their reasons for an award." *United Steelworkers* v. *Enterprise Wheel and Car Corp.*, 363 U. S. 593 at 598 (1960). Our position is that, whatever the form may be, the proceedings of an arbitral body, particularly in proceedings involving the present type of issue, must be characterized by procedural regularity including a demonstrated inquiry into the relevant facts and considerations and an obvious and apparent determination of the merits of the issue.

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3. After a recess was taken the letter was made part of the record but was obviously disregarded (Ex. A to Pet., pp. vii, viii).

II.

As to two additional points in the Petition to which Respondents' Brief in Opposition is addressed, restatement is necessary because of Respondents' erroneous or distorted formulations of the issues:

(1) Petitioner has urged that in any event, the issue in this case—whether the National Master Freight Agreement and the jurisdiction of the Grievance Committee extended to Petitioner's BFL operations—was a "jurisdictional" question that should have been decided by the courts *de novo* and not by way of enforcement of the "award" of the Committee. Respondents do not contend that the courts below decided this issue *de novo*.

We believe that our position is supported by the rule established by this Court. *John Wiley & Sons, Inc.* v. *Livingston*, 376 U. S. 543, 547-48 (1965); *Atkinson* v. *Sinclair Refining Co.*, 370 U. S. 238, 241 (1961); *United Steelworkers* v. *Warrior & Gulf Navigation Co.*, 363 U. S. 574, 582 (1960).

(2) Petitioner does *not* contest the availability of summary judgment to enforce an arbitration award *in a proper case*. We urge that there were clear, unmistakable factual issues of fundamental importance in this case directly relating to an issue which is peculiarly within the original jurisdiction of the courts: namely, the applicability of the "accretions and subsequently acquired operations" clause of the agreement to Petitioner's BFL operations; whether the authorization given by Petitioner to the California Trucking Association to adhere to the Agreement on its behalf did or did not result in including Petitioner's BFL Division regardless of the "subsequently acquired operations" clause; and the chronology and effect of the history

of Petitioner's relationships with the Unions on a *local* basis and of the NLRB proceedings and decisions.[4]

Accordingly, even if we ignore the fact that the courts below concededly proceeded on the basis of enforcing the "award" of the Grievance Committee (which we submit is unenforceable because of procedural irregularity and because it was a decision as to jurisdiction), summary judgment was improper in this type of case because of the existence of substantial factual disputes.

(3) We believe that this case presents the problem of conflict between an NLRB decree and the jurisdiction of a Grievance Committee. It was Respondents' duty to seek relief from the NLRB; to present to it the conflict between its outstanding decision ordering Petitioner to bargain "in four designated local units" with Respondents in respect of Petitioner's BFL Division and Respondents' assertion that the BFL Division was covered by the National Master Freight Agreement. The courts should not lend their sanction to self-help in contravention of an outstanding NLRB order.[5] (See Pet., pp. 13-14).

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4. Respondents stress that Petitioner itself sought summary judgment. That is true, but irrelevant. It opposed a summary disposition of the case in favor of Respondents, as Respondents concede (R. Br., p. 6, footnote 5). As Respondents are aware, Petitioner filed in the District Court an "Opposition to Plaintiffs' Motion for Summary Judgment", "based on questions of fact" which were detailed as including "at least four areas where fact questions are raised requiring a hearing on the merits" (See Printed Transcript of Record, p. 586, et seq.; also pp. 534, 537-539).

5. Petitioner reiterates its point that the courts should not enforce an "award" where either side reserves the power to enforce the award by resort to strike or lock-out rather than by resort to the courts (Pet., pp. 12-13).

CONCLUSION.

For the reasons stated by Petitioner, we renew our prayer that a writ of certiorari be issued so that this Court may decide the important questions presented.

Respectfully submitted,

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